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Message Text

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ACTION EPA-02

INFO OCT-01 EA-10 ISO-00 OES-07 L-03 EB-08 CIAE-00
INR-10 NSAE-00 SS-15 SP-02 /058 W
----------090427 202051Z /73
R 181037Z APR 78
FM AMEMBASSY TOKYO
TO SECSTATE WASHDC 7225

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DEPT. PASS TO EPA

E.O. 11652: N/A
TAGS: SENV, JA
SUBJECT: EPA SMELTER TECHNOLOGY VISIT

REF: (A) STATE 51831; (B) STATE 55009

1. PROF. ANDO BROUGHT EPA AND CONTRACTOR MEMBERS OF SMELTER TECHNOLOGY TEAM TO EMBASSY ON APRIL 3 FOR BRIEF MEETING WITH SCIENCE COUNSELOR BEFORE SETTING OUT ON VISITS TO GOJ AGENCIES AND INDUSTRIAL SITES. SCICOUNS ALSO WAS DEBRIEFED BY TEAM LEADER AFTER CONCLUSION OF SITE VISITS.

2. SCICOUNS LEARNED FROM VISITORS THAT ONE OF PRINCIPAL OBJECTIVES OF EPA MISSION WAS TO OBTAIN INFORMATION FOR USE IN LAWSUITS BY EPA AGAINST U.S. COMPANIES OPERATING METAL SMELTERS, ALTHOUGH EMBASSY WAS AWARE OF EPA GENERAL REGULATORY INTEREST (REFTEL (A), PARA 1 B). RECALLING RECENT PROBLEMS WITH PROPOSED VISIT BY OTHER EPA REPS TO JAPANESE STEEL PLANTS TO COLLECT EMISSIONS DATA FOR USE IN LAWSUITS, SCICOUNS ADVISED EPA TEAM TO STRESS THAT SITE VISITS WERE PRIMARILY FOR COLLECTION OF INFORMATION ON TECHNOLOGY OF POLLUTION CONTROL IN SMELTER OPERATIONS,
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BUT NOT TO HIDE FACT THAT INFO MIGHT BE USED BY EPA IN LEGAL ACTIONS TO DEMONSTRATE THAT CONTROL TECHNOLOGY WAS AVAILABLE. HE ALSO REQUESTED THAT EPA TEAM TRY TO AVOID IDENTIFYING SPECIFIC JAPANESE COMPANIES IN MAKING REPORT ON VISITS WHICH HAD POTENTIAL FOR BECOMING PUBLIC DOCUMENT. PURPOSE HERE WAS TO TRY TO AVOID RECRIMINATIONS BY U.S. COMPANIES AGAINST SPECIFIC JAPANESE COUNTERPARTS, TAKING

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INTO ACCOUNT THAT THESE COMPANIES HAVE WELL ESTABLISHED BUSINESS RELATIONSHIPS INCLUDING AGREEMENTS FOR TECHNOLOGY TRANSFER.

3. IF INVESTIGATORY MISSIONS SUCH AS THE ONE ABOVE ARE TO WORK IN USG INTERESTS, WE MUST BE CAUTIOUS IN APPROACHING THE JAPANESE FOR COOPERATION. THERE IS CONSIDERABLE

OPPORTUNITY FOR THESE VISITS TO BACK-FIRE, REBOUNDING AGAINST OUR OBJECTIVE OF ENHANCING THE FLOW OF JAPANESE POLLUTION CONTROL TECHNOLOGY TO THE U.S. THE GOJ MAY IN FACT DECLINE TO ACCEPT AN EPA MISSION OF THIS SORT SINCE ITS TRADE RELATIONS WITH THE U.S. ARE ALREADY SENSITIVE ENOUGH TO WARRANT RESERVATIONS ABOUT BECOMING INVOLVED IN U.S. DOMESTIC ENVIRONMENTAL PROBLEMS. IF ENFORCEMENT RESPONSIBILITIES OF EPA ARE TO BE MAJOR REASON FOR SENDING TEAMS TO JAPAN, THE FOLLOWING PROCEDURES WOULD ENABLE US TO PROVIDE NECESSARY SUPPORT: (A) EMBASSY SHOULD BE ADVISED WELL IN ADVANCE OF REASON FOR VISIT AND GIVEN OPPORTUNITY TO OBTAIN APPROVAL FROM GOJ; (B) SUCH VISITS WILL BE DEEMED BY USG TO FALL OUTSIDE SCOPE OF U.S.-JAPAN ENVIRONMENTAL COOPERATION AGREEMENT AND WILL BE TREATED ON CASE-BY-CASE BASIS BY DEPT. IN TERMS OF OVERALL U.S. POLITICAL, ECONOMIC, AND TECHNICAL INTERESTS; (C) TEAMS WILL BE INSTRUCTED THAT THEY ARE NOT IN JAPAN FOR PURPOSE LIMITED OFFICIAL USE

OF TAKING WHAT AMOUNTS TO BE DEPOSITIONS FOR USE IN LEGAL ACTIONS; (D) TEAMS WILL TREAT INFORMATION COLLECTED IN GENERAL FASHION, NOT RELATING IT TO SPECIFIC COMPANIES; (E) PROPRIETARY INFORMATION OBTAINED WILL NOT BE RELEASED TO PUBLIC IF JAPANESE SO REQUEST.

4. DEPT. IS ASKED TO CONSIDER THIS MATTER AS PART OF THE BROADER PROBLEM OF THE LEGALITY OF EXTENDING U.S. STATUTORY RESPONSIBILITY AND AUTHORITY TO OTHER COUNTRIES. FOR EXAMPLE, WE HAVE A FORMAL AGREEMENT BETWEEN THE U.S. AND JAPAN TO EXCHANGE REGULATORY INFORMATION ON NUCLEAR ENERGY; THE FOOD AND DRUG ADMINISTRATION INSPECTS JAPANESE PHARMACEUTICAL PLANTS FOR ADHERENCE TO U.S. STANDARDS FOR GOOD MANUFACTURING PRACTICE (GMP); EPA INSPECTS JAPANESE AUTOMOBILE MANUFACTURERS FOR ADEQUACY OF EMISSION CONTROL SYSTEMS FOR CARS EXPORTED TO THE U.S.; FAA INSPECTS CERTIFIED AIRCRAFT REPAIR STATIONS IN JAPAN. LIKEWISE, JAPANESE INSPECTORS PERFORM SOME ANALOGOUS FUNCTIONS IN THE U.S.

4. PERHAPS A U.S.-JAPAN REGULATORY AGREEMENT ON ENVIRONMENTAL CONTROL WOULD BE APPROPRIATE TO DEFINE THE

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RIGHTS OF THE PARTIES. LOOKING AT THE MATTER MORE
BROADLY, IT OCCURS TO US THAT AN OVERALL AGREEMENT
BETWEEN THE TWO COUNTRIES COVERING REGULATORY AND ENFORCE-
MENT MATTERS GENERALLY WOULD HAVE CONSIDERABLE VALUE IN
HEADING OFF FUTURE LEGAL PROBLEMS. MANSFIELD

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